Supreme Court, U. S.
FILED
JUL 26 1974
MICHAEL RODAK, JR., CLERK

No. 73-1245

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

RICHARD V. BISCEGLIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONERS

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the district court (Pet. App. A 1a–5a) is not officially reported. The opinion of the court of appeals (Pet. App. B 6a–22a) is reported at 486 F. 2d 706.

JURISDICTION

The judgment of the court of appeals (Pet. App. C 23a–24a) was entered on October 18, 1973. A petition for rehearing was denied on November 16, 1973 (Pet. App. D 25a). The petition for a writ of certiorari was filed on February 13, 1974, and was granted on April 15, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Internal Revenue Service has statutory authority to issue a summons in order to discover the identity of a person who may be liable for unpaid taxes.

STATUTES INVOLVED

Sections 7601 and 7602 of the Internal Revenue Code of 1954, 26 U.S.C. 7601 and 7602, provide in pertinent part as follows:

> SEC. 7601. CANVASS OF DISTRICTS FOR TAXABLE PERSONS AND OBJECTS.
>
> (a) General Rule.—The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.
>
> * * * * *
>
> SEC. 7602. EXAMINATION OF BOOKS AND WITNESSES.
>
> For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax * * * or collecting any such liability, the Secretary or his delegate is authorized—
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

> (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
>
> (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

STATEMENT

This case arises from the issuance of an Internal Revenue summons in the course of an investigation into unusual currency transactions which suggested the possibility of an unpaid tax liability. The currency transactions involved the Commercial Bank of Middlesboro, Kentucky, of which respondent is the Vice-President.

During November 1970, the Commercial Bank on two separate occasions deposited $20,000 in badly deteriorated one hundred dollar bills with the Cincinnati Branch of the Federal Reserve Bank of Cleveland. The bills were "tissue paper thin" (Pet. App. B 7a; A. 18), a condition apparently caused by a long period of storage. Because they were no longer fit for circulation, the Cincinnati Branch of the Federal Reserve Bank destroyed them in the following month (A. 21–22.) In accordance with regular Federal Reserve pro-

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cedures (31 C.F.R. (1972 ed.) 102), the Cincinnati Branch reported the receipt of these bills to the Internal Revenue Service (Pet. App. B 7a–8a, n. 1).

Deposits of large amounts of cash in high-denomination bills by the Commercial Bank to its branch of the Federal Reserve Bank were unusual [1] and it was especially unusual for such bills to be badly worn. Thus the deposit made by the Commercial Bank was considerably out of the ordinary and suggested that substantial transactions may have taken place outside normal financial channels. Moreover, the deteriorated quality of the bills raised the possibility that someone may have been hoarding money for a considerable period of time in an unusual storage place.[2] These facts in turn suggested to the Internal Revenue Service that the receipt of the bills, either by the Commercial Bank's depositor or by the Commercial Bank itself, may not have been properly reported for federal tax purposes (Pet. App. B 12a).[3]

[1] For example, prior to the deposits in question, the Commercial Bank had deposited only 218 one hundred dollar bills during the first ten months of 1970 (A. 24).

[2] The supervisor of the Currency Section of the Federal Reserve Bank who had noticed the deteriorated condition of the bills testified that to the best of his knowledge, "there was only one parallel situation and that was several years ago where a large hoard of money was found that was in comparable condition. It was stored in milk cans that were buried in concrete (Pet. App. B 9a; A. 20). He further testified that the bills involved here were in much worse condition than the average currency that would be classified as unfit (A. 26).

[3] Among other possibilities, the $40,000 suggests the possibility of an amount hoarded by a decedent and not reported by his estate, an amount illicitly received and not reported as income, or the discovery or gift of a cache of money. Thus, the cash may represent an unpaid income, estate, or gift tax liability.

In order to determine whether any unpaid tax liability was associated with the currency deposited by the Commercial Bank, the Internal Revenue Service initiated an investigation and issued a broad summons requesting respondent to testify and bring with him all books and records which would provide information as to the person or persons who had deposited or otherwise transferred the bills to the Commercial Bank. The summons was issued "[i]n the matter of the tax liability of John Doe" because the identity of the potential taxpayer subject to investigation was of course unknown (Pet. App. B 9a–11a). It was contemplated that once the identity of the person was discovered, the investigation would proceed to a determination of his tax liability for the year in question, by inquiring into the means by which the bills had been acquired, and whether that acquisition had been properly reported for federal tax purposes (Pet. App. B 12a; A. 29, 33).

Respondent refused to comply with the summons for him to testify or to produce the requested information.[4] Accordingly, pursuant to Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954, the government filed a petition in the United States District Court for the Eastern District of Kentucky for enforcement of the summons (Pet. App. B 11a–12a). After a hearing, at which an employee of the Cincinnati Branch of the Federal Reserve Bank, a

[4] There is no suggestion that the requested information was unavailable. Respondent testified that the deposit records were recorded on microfilm (A. 37), and there has been no suggestion that his compliance with the summons would cause undue hardship.

special agent of the Internal Revenue Service, and respondent testified, the district court narrowed the summons to require production of only "deposit tickets reflecting cash deposits in the amount of $20,000.00 during the period from October 16, 1970, through November 16, 1970, plus * * * deposit tickets reflecting * * * cash deposits involving one hundred dollar bills totaling amounts equal to or in excess of $5,000.00 per deposit for a like period" and ordered the summons enforced as modified (Pet. App. A 5a).

The court of appeals reversed (Pet. App. B 6a–22a). That court held that Section 7602 of the Internal Revenue Code of 1954, 26 U.S.C. 7602, which empowers the Service to issue summonses, "presupposes that the IRS has already identified the person in whom it is interested as a taxpayer before proceeding" (Pet. App. B 15a), and that therefore the Service has no statutory authority to issue a summons before it has discovered the identity of the particular person whose transactions it wishes to investigate.[5]

SUMMARY OF ARGUMENT

A

Two provisions of the Internal Revenue Code of 1954, both of which have their origins in the Revised Statutes, support and supplement the accurate and conscientious self-reporting upon which our tax collection system depends. Congress has, in Section 7601

[5] Since it based its decision on statutory grounds, the court of appeals did not reach respondent's alternative contention that the summons constituted an unreasonable search in violation of the Fourth Amendment (Pet. App. B 14a).

of the Code, directed the Secretary of the Treasury or his delegate "to proceed * * * and inquire after and concerning all persons * * * who may be liable to pay any internal revenue tax." In discharging this duty to canvass and to inquire, the Internal Revenue Service has been granted broad statutory powers to examine books and witnesses through the issuance of summonses. Thus, Section 7602 authorizes the Secretary or his delegate "[t]o examine any books, papers, records, or other data which may be relevant or material to such inquiry; * * * [and] to summon * * * any person having possession, custody, or care of books of account * * * or any other person * * * to appear * * * and to produce such books, papers, records, or other data, * * * as may be relevant or material to such inquiry."

This case arises from the issuance of an Internal Revenue summons in the course of an investigation into unusual currency transactions which strongly suggested the possibility of an unpaid tax liability. Here, the Internal Revenue Service was advised by the Federal Reserve Bank in accordance with regular procedures that the Commercial Bank of Middlesboro, Kentucky, had deposited with the Federal Reserve $20,000 in badly deteriorated one hundred dollar bills on two separate occasions within a single month. Such unusual currency transactions suggested that the person or persons who deposited or otherwise transferred these bills to the Commercial Bank may not have properly reported their receipt for federal tax purposes. Because the identity of the potential taxpayer was unknown, an internal revenue summons was

issued "[i]n the matter of the tax liability of John Doe" seeking production of the pertinent deposit records of the Commercial Bank. Reversing the district court's order enforcing the summons, the court of appeals held that the Internal Revenue Service has no authority to issue a summons prior to its discovery of the identity of the person whose tax liability it wishes to investigate.

That holding would seriously undermine the ability of the Internal Revenue Service to insure that all federal taxes due are reported and paid. In addition to routine audits based upon examination of filed tax returns, the Service must utilize other forms of scrutiny if sources of unreported income and its recipients are to be identified. Enforcement efforts in this regard necessarily involve reliance upon third parties, such as the bank in this case, for information concerning unreported income prior to, and often as an aid to, the Service's discovery of the identity of the particular person under investigation.

Unusual cash transactions are only one example of the situations in which "John Doe" summonses have commonly been issued. They also have been issued to tax return preparers in order to discover the identities of their clients, if the preparer is suspected of having not accurately used the information furnished him. In such circumstances, four courts of appeals have upheld enforcement of the very type of summons issued in the present case. Other investigatory programs similarly depend upon the use of such "John Doe" summonses.

B

1. The decision below is broadly inconsistent with the statutory scheme of the Internal Revenue Code which empowers the Service to ascertain the identities of all persons who may be liable for any taxes. Pursuant to Sections 7801(a) and 7802 of the Code, the Secretary of the Treasury, through his delegate the Commissioner of Internal Revenue, is charged with the "administration and enforcement" of the revenue laws. To this end, Sections 6201(a) and 6301, respectively, provide that the Commissioner "is authorized and required to make the inquiries, determinations, and assessments of all taxes" and that he "shall collect the taxes imposed by the internal revenue laws."

Coupled with the statutory duty of the Internal Revenue Service in Section 7601 to inquire after and concerning all persons who may be liable for any internal revenue tax, this panoply of congressional directives necessarily indicates that the Treasury is authorized to discover the identity of an unnamed person through the issuance of a summons. As in other areas of law enforcement, the fundamental question posed to the authorities administering the tax law involves the identification of the responsible parties, *i.e.*, who is liable for additional taxes. The Treasury would not be empowered to make all of the necessary inquiries incident to the fair and effective administration of the tax laws, if its authority did not include the power to ascertain the identities of all persons who may not have fully reported and paid their tax liabilities. Thus, Section 7602, dealing specifically with the summons authority, is most reasonably read as empowering the

Internal Revenue Service to discharge fully its affirmative and wide-ranging duty, imposed by Section 7601, to canvass and inquire after and concerning all persons who may have taxes owing. See *Donaldson* v. *United States*, 400 U.S. 517, 523. Since the summons here was issued in furtherance of a legitimate investigation pursuant to Section 7601, it should be enforced.

2. Section 7602 of the Code empowers the Internal Revenue Service to issue summonses in furtherance of four broad purposes: (1) ascertaining the correctness of any return; (2) making a return where none has been made; (3) determining the liability of any person for any internal revenue tax; or (4) collecting any such liability.

The summons served upon respondent falls well within these statutory purposes because knowledge of the identity of the depositor is a critical first step in the initiation of the statutory process to determine whether he is liable for additional taxes. Such an inquiry will be fully grounded upon one or more of the four enumerated statutory purposes. Indeed, by the time the summons was served upon respondent, the Service's investigation had focused on a particular taxpayer who had deposited the bills in question. Thus, the court of appeals' statement that no "particular" taxpayer is under investigation is correct only in the essentially trivial sense that the depositor had not yet been identified by name.

Moreover, the summons power in Section 7602 is broadly phrased, in keeping with the Service's broad responsibilities. The blanket reference to "any return," "any person," and "any such liability" strongly suggest that the Service's authority is not conditioned

upon prior identification of a particular "return," "person," or "liability." Such a broad reading of the statute is also strongly supported by this Court's analysis in *United States* v. *Powell*, 379 U.S. 48, 58, in which the Commissioner's summons power was analogized to the inquisitorial power of the grand jury.

3. The legislative history of the summons power offers strong additional evidence that Congress did not intend to limit enforcement to those cases where the Service has discovered the identity of the taxpayer under investigation. The 1954 codification of the tax law included a combination of previously separate provisions authorizing the issuance of summonses with "no material change from existing law" intended. An examination of the authoritative predecessor provisions, some of which were originally enacted a century ago, demonstrates that the summons authority was cast in the broadest possible terms and that it was understood by Congress to extend to summonses to ascertain the identity of potential taxpayers as well as those seeking information with respect to identified taxpayers.

C

No useful purpose would be served by limiting the summons power to situations where the taxpayer has already been identified. The court below seemed concerned that enforcement of "John Doe" summonses might open the way to fishing expeditions or dragnet investigations. But this Court in *Donaldson* v. *United States, supra*, and *United States* v. *Powell, supra*, has established ample and specific protection against

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an overbroad or otherwise abusive internal revenue summons. No testimonial privilege, constitutional or otherwise, prevents enforcement of the summons in this case, and no other valid interest would be protected by treating "John Doe" summonses as abusive *per se*.

ARGUMENT

AN INTERNAL REVENUE SUMMONS MAY PROPERLY BE USED IN ORDER TO DISCOVER THE IDENTITY OF A PERSON WHO MAY BE LIABLE FOR UNPAID TAXES

A. THE TYPE OF SUMMONS ISSUED IN THIS CASE IS ESSENTIAL TO EFFECTIVE FEDERAL TAX ENFORCEMENT

The issue raised in this case is of great importance to the administration of the internal revenue laws. The Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury, as set forth in Section 7801(a) of the Internal Revenue Code of 1954, to administer and enforce the internal revenue laws. Our tax collection system depends primarily upon honest self-reporting. However, in order to support and supplement accurate and conscientious self-reporting by all taxpayers, Congress has directed the Internal Revenue Service in Section 7601 of the Code "to proceed * * * and inquire after and concerning all persons * * * who may be liable to pay any internal revenue tax." As this Court observed in *Donaldson* v. *United States*, *supra*, 400 U.S. at 523–524:

> The section thus flatly imposes upon the Secretary the duty to canvass and to inquire. This is an old statute. It has roots in the first of the modern general income tax acts, namely, the

> Tariff Act of October 3, 1913, § II, ¶ I, 38 Stat. 178, and prior to that, in § 3172, as amended, of the Revised Statutes of 1874.

In discharging this duty to canvass and to inquire, the Internal Revenue Service has been granted broad statutory powers to examine books and witnesses through the issuance of summonses. Specifically, Section 7602 authorizes the Secretary or his delegate "[t]o examine any books, papers, records, or other data which may be relevant or material to such inquiry; * * * [and] to summon * * * any person having possession, custody, or care of books of account * * * or any other person * * * to appear before the Secretary * * * at a time and place named in the summons and to produce such books, papers, records, or other data, * * * as may be relevant or material to such inquiry * * *." Such summonses are administratively issued, and the Internal Revenue Service can seek their enforcement in the federal courts. Sections 7402(b) and 7604(a) of the Code.

This Court has consistently recognized that effective, and therefore fair, administration of the tax laws requires that internal revenue agents not be fettered in their good faith use of the investigatory tools that Congress has provided them to determine the liabilities of taxpayers. For example, in *Reisman* v. *Caplin*, 375 U.S. 440, the Court rejected an attempt to obtain injunctive relief against an Internal Revenue summons, holding that the action to enforce the summons afforded an adequate remedy at law in which to challenge the summons.

Similarly, in *United States* v. *Powell*, 379 U.S. 48,

the Court, analogizing the internal revenue summons authority to the broad inquisitorial powers of a Grand Jury (*id.* at 57), held that the Commissioner need not show probable cause to suspect fraud in order to enforce a summons for the production of records, either before or after the three-year limitations period on ordinary tax liability has expired. In *Donaldson* v. *United States*, 400 U.S. 517, the Court held that under Section 7602, an internal revenue summons may be issued in aid of a tax investigation involving potential criminal liability, if it is issued in good faith and prior to a recommendation for prosecution. Most recently, in *Couch* v. *United States*, 409 U.S. 322, the Court, rejecting Fourth and Fifth Amendment claims by the taxpayer, upheld the enforcement of an internal revenue summons directing an accountant to produce business records given to him by the taxpayer.

Like *Powell*, *Donaldson*, and *Couch*, this case arises out of an action by the Internal Revenue Service to enforce a summons seeking the production of records in connection with a tax investigation. Here, the Commercial Bank of Middlesboro, Kentucky, deposited on two separate occasions $20,000 in badly deteriorated one hundred dollar bills with the Cincinnati Branch of the Federal Reserve Bank. In accordance with regular Federal Reserve procedures, the deposits were reported to the Internal Revenue Service.[6] Such

[6] The court of appeals expressed the view (Pet. App. B 9a, n. 1) that pursuant to the same regulations requiring the Federal Reserve Bank to disclose the deposit of cash to the Internal Revenue Service, the Commercial Bank was likewise required to disclose to the Service the information it seeks here. In these circumstances it is difficult to understand the court's refusal to enforce the summons against respondent requiring production of the same information by means of the pertinent deposit tickets.

We note, however, that the banking regulations in force at that time did not contain any sanctions for noncompliance with the reporting requirements. But under the now effective Currency and Foreign Transactions Reporting Act, 84 Stat. 1114, and the regulations promulgated thereunder, each financial institution must file a report concerning each transaction of currency involving more than $10,000. 31 U.S.C. 1081; 31 C.F.R. (1973 ed.) 103.22(a). Furthermore, the Secretary of the Treasury is empowered to assess a civil penalty not exceeding $1,000 for each willful violation of these reporting requirements. 31 U.S.C. 1056(a); 31 C.F.R. (1973 ed.) 103.47(a). The Court recently rejected a constitutional challenge to this Act in *California Bankers Assn.* v. *Shultz*, No. 72-985, decided April 1, 1974.

unusual currency transactions strongly suggested that the person who deposited or otherwise transferred the bills to the Commercial Bank may not have properly reported their receipt for federal tax purposes. Accordingly, the Service issued a summons requesting respondent to provide information as to the identity of the depositor. Because the identity of the potential taxpayer was unknown, the summons was issued "[i]n the matter of the tax liability of John Doe." If the Service had been aware of the identity of the depositor, there is no doubt that the summons requiring respondent to produce the deposit records at issue would have been enforceable. The court of appeals, however, held that the Internal Revenue Service has no authority to issue a summons prior to its discovery of the identity of the person whose tax liability it wishes to investigate.

As we shall discuss in greater detail *infra*, we believe that the court of appeals' confinement of the

Internal Revenue Service's summons power to cases where there has been prior identification of a particular taxpayer has no basis in the language and structure of the Code, which invests broad powers in the Commissioner to make the inquiries necessary to enforce the revenue laws. Our point here is that this unwarranted narrow reading of the statutory summons power would seriously undermine the Service's ability to insure that all federal taxes due are reported and paid.

While the enforcement program of the Internal Revenue Service includes routine audits based upon examination of filed tax returns, a fair administration of the law also requires other forms of scrutiny if sources of unreported income and its recipients are to be identified. In most instances, unreported income cannot be ascertained from an examination of tax returns alone. Indeed, a large number of the recipients of such income fails to file any tax returns. As a result, the Service necessarily must rely upon third parties for information with respect to unreported income. Such investigations are a legitimate and necessary supplement to the examination of returns, and they frequently must proceed without a prior determination of the identity of the person or persons who may be liable for additional taxes.

Cash dealings are of particular concern to the Internal Revenue Service because they offer a means of avoiding the documentary traces left by the usual type of financial transaction which is cleared through one or more banks. While there is of course nothing illegal in using cash as a medium of exchange, the

maintenance of a large sum in cash has always suggested the possibility that the owner has not properly reported its receipt for federal tax purposes. Thus, after it had been advised of the deposit of the $40,000 in cash in this case, the Service was amply justified in seeking from respondent the identity of the depositor in order to pursue its inquiry as to whether the amount had been properly reported by him for federal tax purposes.[7] Moreover, the deteriorated quality of the bills, suggesting that the depositor or some predecessor hid the cash for a lengthy period, also contributed to an inference of possible tax evasion. Despite the strong suggestion that additional taxes might be owed by the owner of the cash hoard, the Internal Revenue Service could not even begin an effective investigation without first discovering the depositor's identity. Indeed, given the sole possession of this critical information by the bank, that identity can most feasibly be ascertained through the use of the power to issue a summons in the name of "John Doe," the unknown potential taxpayer.

Cash transactions of the type presented in this case are but one area in which "John Doe" summonses are commonly issued by the Internal Revenue Service. Tax return preparers are currently the focus of a

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[7] This case is typical of such investigations. For years the Service has investigated suspicious currency transactions reported by the Federal Reserve. For example, during the two-year period 1957–1958, the Service completed 129 fraud investigations, resulting in the assessment of $13,500,000 in taxes and penalties, which were initiated on the basis of Federal Reserve reports. Treas. Release No. A–590, 1959 CCH Stand. Fed. Tax. Rep., par. 6598 (August 3, 1959).

nationwide enforcement effort. This program has frequently involved the use of such summonses upon preparers seeking the identities of, and other information concerning, the preparer's clients in order that the accuracy of their returns may be verified. In such circumstances, four courts of appeals have upheld enforcement of the type of summons issued in this case. See *United States* v. *Theodore*, 479 F. 2d 749 (C.A. 4); *United States* v. *Turner*, 480 F. 2d 272 (C.A. 7); *United States* v. *Berkowitz*, 488 F. 2d 1235 (C.A. 3), petition for a writ of certiorari pending, No. 73-1175; *United States* v. *Carter*, 489 F. 2d 413 (C.A. 5).

Moreover, "John Doe" summonses are currently being employed in a wide variety of situations seeking the identity of particular persons who may be liable for unpaid taxes. Thus, for example, the Service is currently seeking from an oil company the names of its lessors who received lease bonuses in excess of a certain amount and whose leases expired without production of oil or gas. If the lessees claimed the allowance for depletion on their bonus income, they were obliged to restore to income the amount previously claimed as a depletion deduction. Once the identities of the lessors are obtained by the Service, it can effectively enforce this income-restoration requirement. See *United States* v. *Humble Oil & Refining Co.*, 488 F. 2d 953 (C.A. 5), petition for a writ of certiorari pending, No. 73-1827.[8]

[8] Relying in part on the decision below in the present case, the court of appeals in *Humble Oil* refused to enforce the summons. The government's petition for a writ of certiorari in that case suggests that it be held pending the Court's decision in this case.

Similarly, "John Doe" summonses can be used to ascertain the names of the participants in a "tax shelter" investment which the Service concludes does not offer the tax deductions to the investors which have been promised to them by the promoters.[9] Finally, such a summons can be used to identify the recipients of a wide variety of payments of a legal nature, such as sales commissions or fees, or of an illegal nature, such as kickbacks or bribes. While an audit of the payor's tax returns may identify such payments and result in their disallowance as deductions if they are not satisfactorily explained (see Section 162(c) of the Code), the Service's ability to secure the names of the recipients will insure that they properly report such amounts as income.[10]

[9] A district court recently enforced an internal revenue summons requiring several banks to disclose the names, addresses, social security numbers, and number of shares of the beneficial owners of Hartford Fire Insurance Company stock held by the banks as nominees, trustees, or custodians. The summonses resulted from the Service's revocation on March 6, 1974, of its earlier ruling that a 1970 exchange of Hartford Fire Insurance Company stock for stock of International Telephone and Telegraph Corporation was a tax-free transaction. See *United States* v. *Armour* (D. Conn.) (decided April 25, 1974), 74-1 U.S.T.C. par. 9479. Without the use of the summons to ascertain the identities of these stockholders, the Service would not have been able to assert the deficiencies arising out of the ruling revocation.

[10] See, *e.g.*, *United States* v. *Duke* (N.D. Ill.) (decided May 10, 1974), 74-1 U.S.T.C. par. 9475, where the district court enforced a summons requiring copies of the information returns (Form 1099) issued by Avon Products, Inc., a national cosmetics manufacturer. These forms would disclose the names and payments made to members of the company's sales force, known as "Avon Ladies".

In light of the foregoing, it is apparent that a constrictive interpretation of Section 7602, limiting the use of an internal revenue summons to cases where the person under investigation has been identified, would seriously hamper the Service's special tax enforcement efforts as well as many ordinary investigations into suspected tax abuse. We turn now to an examination of the statutory language, structure and legislative history, all of which support the validity of a properly issued "John Doe" summons.

B. IN LIGHT OF ITS LANGUAGE, STRUCTURE, AND LEGISLATIVE HISTORY, THE STATUTORY SCHEME FOR THE ISSUANCE OF INTERNAL REVENUE SUMMONSES INDICATES THAT A "JOHN DOE" SUMMONS IS AUTHORIZED TO ASCERTAIN THE IDENTITY OF A TAXPAYER.

1. The statutory langauge and structure

a. Pursuant to Sections 7801(a) and 7802 of the Code, the Department of the Treasury, through the Commissioner of Internal Revenue, is charged with the "administration and enforcement" of the revenue laws. Consistent with this responsibility, the Commissioner is "authorized and required" by Section 6201(a), "to make the inquiries, determinations, and assessments of all taxes * * *." Once taxes are assessed, Section 6301 directs that the Commissioner "shall collect the taxes imposed by the internal revenue laws." Finally, in order that these statutory duties may be discharged effectively, Section 7601 empowers the Commissioner to "cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax

* * *." This broad power to canvass and inquire is the basis of the Internal Revenue Service's ability to obtain much of the information vital to successful administration and enforcement of the tax laws. For, as in any other area of law enforcement, the tax collecting authorities must be able to ascertain the identities of those persons who are liable for additional taxes. Fair and effective administration of our self-reporting tax system requires that the Internal Revenue Service be able to identify those persons who may owe additional taxes.

That Section 7601 immediately precedes the provision authorizing the Internal Revenue Service to issue summonses is not without significance. Indeed, this Court in *Donaldson* v. *United States, supra;* 400 U.S. at 523, recognized the close relationship between the two provisions by including Section 7601 in what it described as "the statutory structure that Congress has provided for the issuance and enforcement of an internal revenue summons." See also *Tillotson* v. *Boughner,* 333 F. 2d 515 (C.A. 7), certiorari denied, 379 U.S. 913; *DeMasters* v. *Arend,* 313 F. 2d 79, 86–87 (C.A. 9). Such summonses are thus one method available to the Service to discharge its affirmative and far-reaching duty under Section 7601 to "inquire after and concerning all persons * * * who may be liable to pay any internal revenue tax." Surely this statutory term "inquire after and concerning all persons" in no way suggests that the Service must identify a particular taxpayer before it can commence a proper inquiry. To the contrary, the broad command of Section 7601 requires the Service to ascertain the iden-

tities of all persons who may have unpaid tax liabilities. There is no reason, we submit, to conclude that while the Service is empowered, and indeed admonished, by Congress to discover the identity of potential taxpayers, it cannot do so by using the basic investigative tool furnished it by Congress—the internal revenue summons—to secure that information from third-party sources, which are often, as here, the only available source.[11]

b. The language of Section 7602 also confirms the existence of statutory authority for the issuance of

[11] In *United States* v. *Humble Oil & Refining Co.*, 488 F. 2d 953 (C.A. 5), petition for a writ of certiorari pending, No. 73-1827, the court expressed the view that the Service's canvass power under Section 7601 is broader than its summons power under Section 7602. It based this conclusion upon the fact that Section 7601 employs the term "all persons" while Section 7602 speaks of "any person." After noting that a Section 7602 summons may be issued for the purpose of ascertaining the correctness of any return, the court stated that "the canvass power can be employed rather cavalierly while the summons power can be utilized only when IRS scrutiny of a taxpayer or a group thereof becomes particularized or focused" (488 F. 2d at 960).

We submit, however, that there is no difference in meaning between the terms "all persons" and "any person" for purposes of this case. Both phrases, in their full statutory context, suggest that the Service may proceed to discover the identity of a potential taxpayer, either by summons or otherwise. The critical error of the Fifth Circuit in *Humble Oil* was, in our view, its confinement of the summons power to cases of ascertaining the correctness of any return. While that situation would necessarily involve a particular taxpayer, Section 7602 also expressly authorizes the issuance of a summons for the purpose of making a return where none has been made, determining the liability of any person for any internal revenue tax, or collecting such liability. In these instances, the identity of the taxpayer may not be known to the Service at the time it commences its inquiry.

"John Doe" summonses. Section 7602 of the Code empowers the Commissioner to issue summonses in aid of four broad purposes: (1) ascertaining the correctness of any return; (2) making a return where none has been made; (3) determining the liability of any person for any internal revenue tax; or (4) collecting any such liability. The summons served upon respondent falls well within these statutory purposes because knowledge of the identity of the depositor is a critical first step in the initiation of an inquiry to determine whether he is liable for additional taxes. Thus, after the identity of the depositor is discovered, the inquiry would proceed, under the first statutory purpose, to an examination of his returns to determine their correctness. In the event that the depositor had not filed returns, then the Secretary would make such returns under the second statutory purpose. See also Section 6020 of the Code. The inquiry would also encompass, in accordance with the third and fourth statutory purposes, a determination of the liability of the depositor for additional taxes with respect to the acquisition of the cash hoard and, if such taxes are owed, their collection.

Although the investigatory consequences that would follow from ascertaining the depositor's identity would thus appear to be beyond doubt, the court of appeals viewed the summons narrowly as unrelated to any of the statutory purposes of Section 7602. Only by conceptually isolating the specific request of the summons from the ultimate use to which the identity of the depositor would be put, was the court able to state that the Service "has admitted that it has no

particular taxpayer under investigation and that it desires the records solely for the purpose of obtaining the identities of persons and firms who made deposits of the nature described" (Pet. App. B 20a). But the request of the summons should not be viewed in a vacuum without recognition of the fact that an inquiry grounded in the purposes of Section 7602 will commence once the depositor is identified. Indeed, it is difficult to understand how the court expects the Secretary to ascertain the identity of the taxpayer in situations such as the one presented here, if his broad investigatory tool—the internal revenue summons—is not available for that purpose.[12]

Once the summons in this case is viewed as the initiation of an entire statutory process, it is plain that the court of appeals' observation that "no particular taxpayer" is under investigation is not correct in any sense that is meaningful to the Service's statutory responsibilities. By the time the summons was served, the Service's investigation had focused on a particular taxpayer or taxpayers whose peculiar characteristics were narrowly specified, *viz.*, those persons who deposited amounts of cash equal to or in excess of $5,000 in a single deposit involving one hundred dollar bills during the period from October 16, 1970, through November 16, 1970. It cannot be doubted that such person or persons exist and that their tax liabilities are a subject of bona fide concern to the Internal

[12] The cash transaction reporting requirements discussed in note 6, *supra*, apply, of course, to only one category of the many situations in which "John Doe" summonses are used. See pp. 17–19, *supra*.

Revenue Service. Thus, the court's statement that no "particular" taxpayer is under investigation is accurate only in the essentially trivial sense that the depositor or depositors had not yet been identified by name. The very purpose of the summons was to discover their names in order to proceed with the types of investigation fully countenanced by Section 7602. Indeed, under the court of appeals' view, even in a situation where the Service had conclusive evidence of unpaid taxes and a description of the tax evader, it would still lack the authority to ascertain his name from a third person through its summons process.

Nothing in the statute requires, or even suggests, the narrow construction given it by the court below—that the Service is not authorized to issue a summons to a third party except in furtherance of an investigation of a named taxpayer. The summons power of Section 7602 is broadly phrased, in keeping with the broad enforcement responsibilities it is designed to implement. The blanket references to "any return," "any person," and "any such liability" strongly suggest that the Service's summons authority is not conditioned upon prior identification of a particular "return," "person," or "liability." The second statutory purpose for the issuance of a summons—"making a return where none has been made"—may frequently require investigation of persons who are unknown to the Service because they have failed to file a return.

2. The legislative history

The foregoing analysis of the statutory text as authorizing the issuance of "John Doe" internal revenue summonses is also supported by the pertinent legislative history. At the time of the 1954 codification of the tax law, the report of the House Ways and Means Committee stated that the revisions of the procedural and administrative provisions "represent[ed] a substantial simplification" under which "it has been possible to combine a great number of provisions, shortening them and providing more uniform application for the various internal revenue taxes. H. Rep. No. 1337, 83d Cong., 2d Sess., p. 99. See also S. Rep. No. 1622, 83d Cong., 2d Sess., p. 133; 100 Cong. Rec. 3425. Specifically, the legislative history of Section 7602, the summons power, shows that Congress intended "no material change from existing law." H. Rep. No. 1337, *supra*, at A436; S. Rep. No. 1622, *supra*, at 617. Thus, an understanding of the scope of the earlier provisions governing the power of the Internal Revenue Service to canvass and to issue summonses is essential to any appraisal of the breadth of the present statutory structure.

As the Court noted in *Donaldson* v. *United States*, *supra*, 400 U.S. at 523–524, the duty of the Internal Revenue Service to canvass and to inquire derives from Section 3172 of the Revised Statutes of 1874. Similarly, the summons power, presently set forth in Section 7602 of the 1954 Code, also is rooted in statutes

enacted more than a century ago.[13] The legislative history of Section 7602 shows that the summons power was derived from three separate provisions, *viz.*, Sections 3614, 3615(a)–(c), and 3654 of the Internal Revenue Code of 1939.[14] While the first of these statutes originally appeared in 1919, the latter two had independent roots in Revenue Acts dating back in 1864.

Thus, the "existing law" before the adoption of Section 7602 in the 1954 Code, appeared in part in Section 3614(a) of the 1939 Code, which provided as follows:

> *To determine liability of the taxpayer.* The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return, where none has been made,

[13] Because the 1939 Code also was intended merely to codify existing law with no attempt to effect substantive changes (see, *e.g.*, S. Rep. No. 20, 76th Cong., 1st Sess., p. 1), earlier Revenue Acts must be examined in order to ascertain the meaning of specific provisions of that codification.

[14] See Table II of the 1954 Code, 68A Stat. 969, which notes that Sections 3614 and 3615(a)–(c) of the 1939 Code were essentially carried forward into Section 7602 of the 1954 Code. See also *Donaldson* v. *United States*, *supra*, 400 U.S. at 535, referring to Section 7602 as having "ascertainable roots" in Sections 3614(a) and 3615(a)–(c) of the 1939 Code. Although Table II does not contain any reference to Section 3654(a) of the 1939 Code, the inclusion of the summons power in that provision, coupled with the committee reports' statements that Congress intended no material change in existing law, strongly suggests that an examination of Section 3654(a) of the 1939 Code is necessary as an aid to understanding the current scope of the summons power. See Section 7806(b) of the 1954 Code. Moreover, the "close proximity" of Section 3654 to Sections 3614 and 3615, as the Court noted in *Donaldson* (*ibid.*), makes Section 3654 highly relevant in any consideration of the summons authority.

> is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

The Commissioner was first given the power to examine records and compel attendance of witnesses and take testimony in 1919 through the enactment of a virtually identical provision. Act of February 24, 1919, c. 18, 40 Stat. 1057, 1142, Sec. 1305.[15]

The second part of the "existing law" carried forward in Section 7602 was contained in Section 3615 (a)–(c) of the 1939 Code, which granted a summons power to the collectors[16] by providing in pertinent part as follows:

[15] Neither the committee reports nor the congressional debates contain any reference to the meaning of the 1919 provision.

The 1919 provision was reenacted several times before becoming part of the 1939 Code. Act of November 23, 1921, c. 136, 42 Stat. 227, 310, Sec. 1308; Act of June 2, 1924, c. 234, 43 Stat. 253, 340, Sec. 1004; Act of February 26, 1926, c. 27, 44 Stat. (Part 2) 9, 113, Sec. 1104; Act of May 29, 1928, c. 852, 45 Stat. 791, 878, Sec. 618.

[16] The summons authority was originally given to assessors and supervisors. Act of June 30, 1864, c. 173, 13 Stat. 223, 226, Sec. 14; Act of July 20, 1868, c. 186, 15 Stat. 125, 144, Sec. 49. These offices were abolished and the summons authority transferred to collectors. Act of December 24, 1872, c. 13, 17 Stat. 401, Sec. 1;

> (a) *General authority.* It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. * * *
>
> (b) *Acts creating liability.* Such summons may be issued—
>
> (1) *Refusal or neglect to comply with notice requiring return.*—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or
>
> * * * * *
>
> (2) *Failure to render return on time.* Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or
>
> (3) *Erroneous, false or fraudulent return.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or

Act of August 15, 1876, c. 287, 19 Stat. 143, 152. The collectors continued to have the summons authority until the Treasury was reorganized under the Reorganization Act of 1949, 63 Stat. 203. The functions of all Treasury officials were transferred to the Secretary, who was authorized to redelegate all existing authority and the office of collector was abolished. See Reorganization Plan No. 26 of 1950 (15 Fed. Reg. 4935); Reorganization Plan No. 1 of 1952 (17 Fed. Reg. 2243). The summons in the present case was issued by the special agent pursuant to Delegation Order No. 4 (Rev.) (22 Fed. Reg. 3894). See Treasury Regulations, Section 301. 7602–1(c)).

fraudulent, or contains any undervaluation or understatement,

(4) *Refusal to permit examination of books.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

(c) *Persons liable.* Such summons may be issued to—

(1) *Persons mentioned in subsection (b).* Any person mentioned in subsection (b), or

(2) *Persons having books.* Any other person having possession, custody, or care of books of account containing entries relating to the business of any person mentioned in subsection (b), or

(3) *Other persons.* Any other person the collector may deem proper.

This section closely follows a provision first adopted in 1864, Act of June 30, 1864, c. 173, 13 Stat. 223, 226, Sec. 14,[17] and reenacted several times prior to its codification in 1939.[18]

[17] There were no committee reports on the 1864 Act.

[18] Act of July 13, 1866, c. 184, 14 Stat. 98, 101, Sec. 9; Act of December 24, 1872, c. 13, 17 Stat. 401, Sec. 1. In 1873 the provision was codified as part of Section 3173 of the Revised Statutes, which section was amended by Act of March 1, 1879, c. 125, 20 Stat. 327, 330–331, Sec. 3; Act of August 27, 1894, c. 349, 28 Stat. 509, 557–559, Sec. 34; Act of October 3, 1913, c. 16, 38 Stat. 114, 177–179, Subsec. I; Act of September 8, 1916, c. 463, 39 Stat. 756, 773–774, Sec. 16; Act of February 24, 1919, c. 18, 40 Stat. 1057, 1146–1147, Sec. 1317; Act of November 23, 1921, c. 136, 42 Stat. 227, 311–312, Sec. 1311; Act of June 2, 1924, c. 234, 43 Stat. 253, 344–346, Sec. 1018; Act of February 26, 1926, c. 27, 44 Stat. (Part 2) 9, 117–118, Sec. 1115.

Finally, and of particular pertinence here, the third part of the "existing law" carried forward in Section 7602 of the 1954 Code is derived from Section 3654(a) of the 1939 Code, which provided as follows:

> SEC. 3654. GENERAL POWERS AND DUTIES RELATING TO COLLECTION.
>
> (a) *Collectors.*—Every collector within his his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.

This Section was derived from an essentially identical provision first enacted in 1868, Act of July 20, 1868, c. 186, 15 Stat. 125, 144, Sec. 49, and codified as part of Section 3163 of the Revised Statutes of 1874.[19]

[19] This statute was amended by the Act of August 15, 1876, c. 287, 19 Stat. 143, 152, pursuant to which the supervisors' functions were eliminated and their investigative powers transferred to the collectors. See n. 16, *supra*. Section 3163 of the Revised Statutes was amended by the Act of March 1, 1879, c. 125, 20 Stat. 327, 328, Sec. 2, which also imposed the duty to oversee that all laws and regulations relating to the collection of internal revenue taxes were faithfully executed upon the revenue agents as well as the collectors. Because at that time Congress did not want to extend the summons power given to

Significantly, in the 1878 congressional debates concerning whether to extend the summons power held by the collectors to the revenue agents, the power of the collectors to summon third-party records as a means of discovering the taxpayer's identity appears to have been well understood. See 7 Cong. Rec. 3920–3924. Indeed, the debate included (*id.* at p. 3922) a description of an incident in which an internal revenue summons was issued to a railroad to examine its books of account in order to determine the identity of the distiller who shipped spirits which were believed to be untaxed.

Thus, by combining Sections 3614, 3615(a)–(c), and 3654 into Section 7602 in 1954 without intending to change existing law, Congress continued to sanction the use of an internal revenue summons to discover the identity of a person who may be liable for unpaid taxes. Like Section 7602, all of these prior provisions cast the summons power in the broadest possible manner, using terms such as "any person," "any return," and "any objects or income liable to tax." Moreover, the expansive scope of Section 3654 of the 1939 Code, granting to the collectors the power to issue summonses for any purpose relating to their duty to oversee the faithful execution of internal revenue laws and to the "prevention, detection, and punishment of

collectors to the revenue agents, the reference to the summons authority was deleted from Section 3163 of the Revised Statutes. However, the collectors continued to maintain the authority to issue summonses under the Act of August 15, 1876, c. 287, 19 Stat. 143, 152, which was carried forward into Section 3654(a) of the 1939 Code. See Table B, 53 Stat. (Part 1) XLII.

any frauds," strongly supports a reading of Section 7602 as empowering the Service to discharge fully its affirmative and wide-ranging duty under Section 7601 to canvass and to inquire. Thus, the history, as well as the text of both the current provision and its authoritative predecessors tends to refute, rather than support, the distinction, made by the decision below, between a summons to ascertain the identity of a potential taxpayer and one seeking information with respect to an identified taxpayer.

C. NO VALID INTEREST WOULD BE PROTECTED BY THE HOLDING BELOW THAT "JOHN DOE" INTERNAL REVENUE SUMMONSES ARE INVALID PER SE

1. Although the court of appeals premised its decision upon the ground that Section 7602 does not authorize the issuance of a summons when no named taxpayer is under investigation, its opinion and that of the Fifth Circuit in *Humble Oil* reflect concern that such "John Doe" summonses might be used for open-ended investigations of an exploratory nature that might in some manner infringe upon interests which should be protected from governmental inquiry. Thus, the court here referred to the possibility of examination of "the financial affairs of an indefinite number of unspecified persons * * *" (Pet. App. B 15a), while the *Humble Oil* opinion condemned what it characterized as "conduct[ing] a 'fishing expedition' * * * pursuant to a research project" (488 F. 2d at 960–961).

But the types of abuses apparently feared—fishing expeditions or dragnet investigations—do not inhere in every internal revenue summons drawn in the name

of "John Doe" which seeks to discover the name of a particular person who may be liable for unpaid taxes. And this Court's decisions provide ample and specific protection against such defects as overbreadth or immateriality in any internal revenue summons.[20] For example, in *United States* v. *Powell*, 379 U.S. 48, 57–58, the Court set out four requirements for the enforcement of an internal revenue summons: (1) that the investigation be conducted pursuant to a legitimate purpose; (2) that the inquiry be relevant

[20] Indeed, the court below principally relied (Pet. App. B 16a–18a) upon decisions refusing enforcement of summonses on the ground of immateriality (*McDonough* v. *Lambert*, 94 F. 2d 838 (C.A. 1); *In re International Corporation Co.*, 5 F. Supp. 608 (S.D.N.Y.)) or overbreadth (*Local 174, Etc.* v. *United States*, 240 F. 2d 387 (C.A. 9); *First National Bank of Mobile* v. *United States*, 160 F. 2d 532 (C.A. 5)). Those decisions are irrelevant to the question of statutory authority raised here. Indeed, the court in *International Corporation Co.*, specifically recognized the validity of a "John Doe" summons, citing *Miles* v. *United Founders Corp.*, 5 Supp. 413 (D. N.J.). The latter case enforced an internal revenue summons which sought from a corporation the names of its shareholders.

Mays v. *Davis*, 7 F. Supp. 596 (W.D. Pa.), also cited by the court below (Pet. App. B 17a) and relied upon by the Fifth Circuit in *Humble Oil* (488 F. 2d at 962), is similarly inapposite. There, a summons was issued under Section 618 of the Revenue Act of 1928. That statute, which was carried forward as Section 3614 of the 1939 Code, authorized summonses solely "for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made." On the basis of this purpose clause, the court held that the statute did not authorize a summons to require a trust company to reveal the names of all of the beneficiaries of a certain type of trust. But the present summons authority reflects an amalgamation of all of the prior statutory provisions, *viz.*, Sections 3614, 3615(a)–(c), and 3654(a) of the 1939 Code. Its scope is therefore necessarily broader than that of Section 3614, upon which *Mays* rests.

to the purpose; (3) that the information sought is not already within the Commissioner's possession; and (4) that the administrative steps required by the Code have been followed. Moreover, in *Donaldson* v. *United States, supra*, 400 U.S. at 530, the Court reiterated two instances, previously specified in *Reisman, supra*, where intervention by a taxpayer in a summons enforcement proceeding is appropriate, namely, "where 'the material is sought for the improper purpose of obtaining evidence for use in criminal prosecution' or where 'it is protected by the attorney-client privilege.'"

In light of the substantial protections afforded by this Court's decisions against an overbroad or otherwise abusive internal revenue summons, no useful purpose would be served by a *per se* rejection of the validity of any and all "John Doe" summonses. The summons here, as well as that in *Humble Oil*, sought records or information described with specific particularity and was in no sense overbroad or immaterial to the subject under inquiry. See *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186. Indeed, the district court narrowed enforcement of the summons here to require production only of certain types of cash deposit tickets during a specified period (Pet. App. A 5a). It thus demonstrated that the enforcement process contains the necessary judicial safeguards against abuse of process, without a *per se* rule needlessly curtailing the Service's ability to pursue legitimate inquiries. See *United States* v. *Powell, supra*, 379 U.S. at 58 and n. 20.

Nor has any valid testimonial privilege been asserted here to justify respondent's refusal to comply with the summons. This Court has only recently held, in sustaining the constitutionality of the Bank Secrecy Act of 1970, that no privilege, constitutional or otherwise, protects banks from the requirements of record-keeping and production to the government of the very type of information sought by the internal revenue summons in this case. See *California Bankers Association* v. *Shultz,* No. 72–985, decided April 1, 1974. No claim of privilege against self-incrimination has been made on behalf of the bank or any of its officers, nor would such a claim be available. See *e.g., Hale* v. *Henkel,* 201 U.S. 43, 74–75; *Wilson* v. *United States,* 221 U.S. 361, 382–384; *Bellis* v. *United States,* No. 73–190, decided May 28, 1974. Similarly, while taxpayers who are presently unknown may be incriminated by the records sought by the Service in these cases, the production of such third-party records involves no violation of their Fifth Amendment rights. See *Couch* v. *United States, supra,* 409 U.S. at 328; *Donaldson* v. *United States, supra,* 400 U.S. at 537 (Douglas J., concurring).

Finally, respondent's Fourth Amendment claim, which the court of appeals did not find it necessary to reach, is insubstantial in light of the district court's narrowing of the enforcement order. It has long been settled that a reasonable internal revenue summons served upon a third-party bank does not violate the Fourth Amendment rights of either the bank or any person who might be subject to investigation. *First National Bank of Mobile* v. *United States,* 267 U.S. 576, affirming, 295 Fed.

142, 143 (S.D. Ala.); *Donaldson* v. *United States, supra,* 400 U.S. at 522.

2. Except for the decision below and *Humble Oil,* the foregoing considerations have led four courts of appeals to uphold enforcement of the type of summons issued in this case. See *Tillotson* v. *Boughner,* 333 F. 2d 515 (C.A. 7), certiorari denied, 379 U.S. 913; *United States* v. *Theodore,* 479 F. 2d 749 (C.A. 4); *United States* v. *Turner,* 480 F. 2d 272 (C.A. 7); *United States* v. *Berkowitz,* 488 F. 2d 1235 (C.A. 3), petition for a writ of certiorari pending, No. 73–1175; *United States* v. *Carter,* 489 F. 2d 413 (C.A. 5). See also *United States* v. *Clayton & Co.* (S.D. Miss.), decided May 10, 1973, 73–1 U.S.T.C. par. 9452.

Tillotson involved a summons requesting a lawyer to testify concerning the identity of the client or clients on whose behalf he had made an anonymous payment to the Internal Revenue Service. In upholding enforcement of the summons, the Seventh Circuit expressly rejected the argument, upon which the decision below is grounded, "that only an investigation of a taxpayer whose identity is known is authorized" (333 F. 2d at 516). The court below purported to distinguish *Tillotson* on the ground that the summons in that case was issued to assist in determining a specific taxpayer's liability whereas the summons here requests "examination of bank records pertaining to the affairs of a class of persons when no particular, specific taxpayer was under investigation" (Pet. App. B 22a). But in both *Tillotson* and in this case, the identity of the person subject to investigation was unknown; and the person whose identity is

being sought here—the transferor of the one hundred dollar bills—is no less "specific" than the unidentified client in *Tillotson*. The court's distinction of *Tillotson* is thus factually unpersuasive and cannot in any event be squared with its broad declaration that Section 7602 "presupposes that the IRS has already identified the person in whom it is interested" (Pet. App. B 15a).

The other "John Doe" summons cases involve enforcement of summonses issued to tax preparers seeking the identities of, and other information concerning, the preparer's clients. See, *e.g.*, *United States* v. *Theodore*, 479 F. 2d 749 (C.A. 4); *United States* v. *Turner*, 480 F. 2d 272 (C.A. 7); *United States* v. *Berkowitz*, 488 F. 2d 1235 (C.A. 3), petition for a writ of certiorari pending, No. 73-1175;[21] *United States* v. *Carter*, 489 F. 2d 413 (C.A. 5). The court below made no attempt to distinguish this line of cases.[22] Although these cases and *Tillotson* arose in different contexts, like *Tillotson* they stand for the

[21] In upholding enforcement of a summons seeking a tax preparer's customer list, the Third Circuit in *Berkowitz* suggested that there was an "obvious distinction" between the present case and a summons issued to a tax preparer. It stated that whereas in this case the information was "not otherwise in the control of the Internal Revenue * * * the request here * * * is to secure enough facts so that the Commissioner may locate data [*viz.*, the returns filed by the preparer's customers] which he now possesses" (488 F. 2d at 1236). This distinction, however, overlooks the fact that internal revenue summonses are commonly used to obtain information which is not otherwise available to the Service.

[22] The court discussed only *Theodore*, which it apparently read as refusing to enforce a "John Doe" summons (see Pet. App. B 19a–20a). While the Court in *Theodore* concluded that the scope of the summons was too broad, it further held that the Service was entitled to production of a list of the preparer's clients' names and Social Security numbers (479 F. 2d at 755).

general principle, which we urge here, that the Internal Revenue Service has the statutory authority to issue a summons in order to discover the identity of a person who may be liable for unpaid taxes.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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JULY 1974.

U.S. GOVERNMENT PRINTING OFFICE: 1974